

MEMORANDUM

FROM: Gray O'Dwyer
Assistant Attorney General

DATE: January 23, 2020

RE: Revising Regulations for Nonattainment New Source Review – 9 Va. Admin. Code §§ 5-80 *et seq.*

Please note that this memorandum does not constitute an opinion, formal or informal, of the Attorney General. Rather, this memorandum contains the legal analysis of the individual staff member providing it.

The Virginia Air Pollution Control Board (“Board”) has the authority to revise 9 Va. Admin. Code § 5-80 *et seq.* to bring that regulation into conformity with federal law. Here, the Board’s proposed amendment will bring this regulation up to date with the latest update to Part D of the Clean Air Act, “Plan Requirements for Nonattainment Areas” as published on December 6, 2018. Additionally, the Board has the authority to revise 9 Va. Admin. Code § 5-80 *et seq.* to correct a technical error.

The Administrative Process Act (“APA”) in § 2.2-4006(A)(4)(c), allows the Board to adopt this regulatory amendment as a final exempt action as the changes are necessary to conform to changes in the federal regulations. The APA in § 2.2-4006(A)(3) further allows the Board to adopt this regulatory amendment as a final exempt action as the changes are necessary to correct a technical error.

The foregoing conclusion is my own. It does not constitute an opinion, formal or informal, of the Attorney General.